IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7721 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GIRISH H. TRIVEDI - Petitioner(s)

Versus

THE COMMISSIONER OF POLICE & 1 - Respondent(s)

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Appearance :

MR NM KAPADIA for Petitioner No(s).: 1.

NOTICE SERVED BY DS for Respondent No(s).: 1.

MR PD BHATE, AGP for Respondent No(s).: 2.

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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 09/08/2005

ORAL JUDGMENT

1.Rule. Mr.Bhate, learned AGP waives service of rule on behalf of the respondents. With the consent of the

parties, the matter is taken up for final hearing.

2. By filing this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for a writ of Habeas Corpus or a writ of mandamus or writ of certiorari or any other appropriate writ, order or direction in the like nature quashing and setting aside the impugned order of detention dated 5.4.2004 passed by respondent no.1.

3. It is the case of the petitioner that the petitioner came to be falsely involved in CR No.5022 of 2004 registered with Satellite Police Station on 13.3.2004. It is also the case of the petitioner that after reading the name of the petitioner in the newspaper, the petitioner sent a letter to the Commissioner of Police Ahmedabad City by FAX. The said letter is dated 15.3.2004 and as per his case, it was specifically disclosed that the petitioner had no connection whatsoever with Jagdish Sisodia, Maulik @ Pappu and other seven persons. It appears from the record that, thereafter, the impugned order dated 5.4.2004 came to be passed under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 (“the Act” for short). It is the case of the petitioner that thereafter, the petitioner filed Criminal Misc. Application No.5776 of 2004 under Section 482 of the

Code of Criminal Procedure, 1973 to quash Criminal Case No.4277 of 2004 pending before the learned 3rd Joint Judicial Magistrate, First Class, Ahmedabad (Rural) which came to be filed in pursuance of FIR bearing Prohibition CR No.5022 of 2004 on 13.3.2004 at Satellite Police Station, Ahmedabad. The said petition came to be allowed by this Court (Coram: J.R.Vora,J) vide order / judgment dated 10.12.2004 and quashed Criminal Case No.4277 of 2004 pending before the learned 3rd Joint Judicial Magistrate, First Class, Ahmedabad (Rural) filed pursuant to FIR bearing Prohibition CR No.5022 of 2004 registered with Satellite Police Station qua the present petitioner. It appears from the record that, thereafter, the petitioner sent the representations dated 2.3.2005 and 10.6.2005 at Annexures-D and EE respectively to the petition.

4. Being aggrieved and dissatisfied with the order of detention dated 5.4.2005, the petitioner has preferred the present petition under Articles 226 and 227 of the Constitution of India for the aforesaid relief.

5. Heard the learned advocates for the parties.

6. It is submitted by the learned advocate Mr.N.M.Kapadia appearing for the petitioner that simply because the activities of the petitioner are prejudicial to the

maintenance of the public order within the meaning of Section 3(1) & (4) of the Act is no ground to detain the petitioner under the preventive detention in view of the fact that the criminal complaint is quashed, and, therefore, the petitioner cannot be considered to be a “bootlegger” even if the statements of secret witnesses are recorded to show that the activities are prejudicial to the maintenance of public order. He submitted that so-called activities of the petitioner cannot be said to be against the public order. Mr.Kapadia has submitted that the case of petitioner is covered by the exceptions enumerated by the Honourable Apex Court in the case of Additional Secretary to the Government of India Vs. Alka Subhash Gadia, reported in 1992 Supp(1) SCC 496. He further submitted that on the ground of parity also, the order of detention passed against the petitioner is required to be revoked by the respondents since the detention orders of persons who were detained on the basis of CR No.5022 of 2004 registered at Satellite Police Station have been quashed by this Honourable Court (Coram: R.P.Dholakia,J). Relying upon the decision in the case of Mansukh Chhaganlal Bhatt Vs. Union of India, reported in 1995(1) EFR 572, Mr.Kapadia has submitted that the powers of revocation can be exercised even

before the execution of detention order. He submitted that rejection of a representation is not a consideration thereof and considering a representation is not an idle formality provided by the Constitution, and, therefore, the respondents were required to consider the representation favourably and revoke the order of detention passed against the petitioner. In support of his submissions, Mr.Kapadia has relied upon the following judgments.:

(a) Rajindra Vs. Commissioner of Police, Nagpur Division and others, reported in 1994 Supp (2) SCC 716.

(b) Shaik Hanif and others Vs. State of W.Bengal, reported in AIR 1974 SC 679.

© K.Varadharaj Vs. State of T.N. And another, reported in (2002) 6 SCC 735.

(d) Sindhi Kasam Moti since decd, through his heirs and legal representatives : Habib Kasam Sindhi and others Vs. M.N.Buch, Deputy Custodian of Evacuee Property and Collector-cum-Settlement Commissioner, reported in 1984 GLH 893.

It is, therefore, requested to quash and set aside the impugned detention order dated 5.4.2005 passed by respondent no.1 against the present petitioner.

7.On the other-hand Mr.Pradip Bhate, learned AGP

appearing for the respondents has opposed this petition and has tried to support the order passed by respondent no.1 dated 5.4.2004. He submitted that entertaining the petition by quashing and setting aside the order dated 5.4.2004 would amount securing right to the proposed detenu the right to seek judicial review of the detention order even before it is executed and would also enable him thereby to pass the procedure laid down by the law to challenge it after it is executed. He further submitted that as held by the Honourable Apex Court, the courts have power to entertain grievances against any detention order prior to its execution and they have used it in proper basis although such cases have been few and the grounds on which the courts have interfered with them on pre-execution stage which necessarily have very limited in scope and number where the courts are prima satisfied that (i) that the impugned order is not passed under the Act under which it is purported to have been passed; (ii) that it is sought to be executed against a wrong person; (iii) that it is passed for wrong purpose; (iv) that it is passed on vague, extraneous irrelevant grounds, and (v) that the authority which passed it had no authority to do so. He, therefore, submitted that looking to the above well settled principles enunciated in the above

referred judgment, it is evidently and explicitly clear that the Court would hear such petition against the order of detention after the order is passed. He submitted that the petitioner is not similarly situated person with other co-detenu since the petitioner evaded his arrest and remained absconding till today. Relying upon the decision in the case of Union of India and others Vs. Parasmal Rampuria, reported in (1998) 8 SCC 402, Mr.Bhate submitted that the petitioner was first required to be surrendered pursuant to the detention order and then raise his grievances examined on merits. Relying upon the decision in the case of Union of India and others Vs. Muneesh Suneja, reported in AIR 2001 SC 854, Mr.Bhate also submitted that interference by this Court at pre-detention statge is not permissible except in certain circumstances. It is, therefore, requested to dismiss the present petition.

8. As can be seen from the record of the case that the present petition is filed by the petitioner under Articles 226 and 227 of the Constitution of India at pre-execution stage. It is well settled by now that there is no legal bar against the entertainment of the petition at pre-execution stage, however, the Court is required to exercise the powers in such cases only in exceptional cases. In the case of The Additional

Secretary to the Government of India (supra), the Apex Court has observed therein as under.:-

> “It is not correct to say that the Courts have no power to entertain the grievances against any detention order prior to its execution. The Courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the Courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the Courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds, or (v) that the authority which passed it had no authority to do so.”

9. It is, therefore, clear that the Courts have necessary power provided that the Courts prima facie satisfied regarding well settled principles enunciated in the above referred judgment. As can be seen from the facts of the case, the case of the petitioner is not covered by any of the aforesaid principles laid down by the

Honourable Apex Court in the case of The Additional Secretary to the Government of India (supra). The contention of the learned advocate appearing for the petitioner that on the ground of parity also, the impugned order deserves to be quashed is ill-founded because the present petitioner evaded his arrest and remained absconding till today and this aspect has been supported by para 2 of the affidavit-in-reply filed by respondent no.1. It is averred in para 6 of the affidavit-in-reply that the petitioner has suppressed material facts from the Court that the order under the PASA has already been passed against him, and, therefore, the petitioner cannot take shelter of the subsequent event after passing the order of detention to take the advantage of the same. Merely, on the basis of quashing the Criminal Case No.4277 of 2004 qua the petitioner cannot be said to be a ground for quashing the impugned order since the impugned order is passed by the detaining authority considering the other aspects of the matter also.

10. In view of the aforesaid aspect of the matter, I do not find any substance in the present petition and therefore, the same is required to be dismissed. The petition is accordingly dismissed.

11. At this stage, it is submitted by Mr.Kapadia that in

view of the rejection of this petition, the petitioner may be permitted to make appropriate representation before the appropriate authority. However, it will be open for the petitioner to make appropriate representation and ultimately it is for the authority concerned to decide the same in accordance with law. It is made clear that this Court has not expressed any opinion on the merit of the representation that may be made by the petitioner.

(Sharad D.Dave,J)

srilatha